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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1951

No. 118

JOSEPH BEAUHARNAIS, PETITIONER,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS

PETITION FOR CERTIORARI FILED JUNE 15, 1951.

CERTIORARI GRANTED OCTOBER 8, 1951.

SUPREME COURT OF THE UNITED STATES

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[fol. 1] [File endorsement omitted]

IN THE SUPREME COURT OF ILLINOIS, SEPTEMBER TERM, A. D. 1950

Appeal from the Municipal Court of Chicago

Honorable Joseph H. McGarry, Judge Presiding

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

vs.

JOSEPH BEAUHARNAIS, Defendant-Appellant.

Abstract of Record—Filed August 19, 1950

INFORMATION

Placita.

Information filed January 7, 1950 that on January 7, 1950 defendant unlawfully published a lithograph, etc.

Motion to quash complaint.

Order of March 5, 1950 granting leave to file amended information.

AMENDED INFORMATION

Amended information filed March 6, 1950. Alleges that the defendant on January 7, 1950, at the City of Chicago, [fol. 2] did unlawfully publish, present and exhibit in public places lithographs, which publications portray depravity, criminality, unchastity or lack of virtue of citizens of Negro race and color and which exposes citizens of Illinois of the Negro race and color to contempt, derision, or obloquy, which more fully appears in Exhibit A, which is attached hereto and made a part hereof. (Said Exhibit A is the same as Exhibit 3 introduced in the trial record 83 and appears herein at page 83 of the record).

VERDICT OF JURY

May 4, 1950, verdict of the jury finding defendant guilty and fining him $200.00 and the judgment of the court that said defendant is guilty of the criminal offense of violation of Paragraph 471, Chapter 38, Illinois Revised Statutes,

1945, on said verdict of guilty, and assessing a fine of $200.00 against defendant and costs of $6.00.

Motion for new trial entered and continued to May 5, 1950. Bail increased to $400.00 cash. Individual bond.

May 4, 1950, verdict of guilty against defendant and $200.00 fine signed by the foreman and eleven jurors.

JUDGMENT

May 12, 1950, order of court: motion for judgment notwithstanding the verdict overruled. Judgment on verdict. Motion in arrest of judgment prayed and overruled. Appeal bond $400.00. Bond approved and ordered filed. Bill of exceptions to be filed in ninety days.

May 4, 1950, bond in the sum of $400.00 filed.

May 12, 1950, stay bond in the sum of $400.00 with Maryland Casualty Company as surety, approved and filed.

[fol. 3] NOTICE OF APPEAL

May 16, 1950, notice of appeal from the Municipal Court of Chicago to the Supreme Court of Illinois (and proof of service) that said judgment be reversed.

May 25, 1950, stipulation to incorporate the original transcript of evidence in lieu of a copy thereof in the record on appeal.

May 25, 1950, praecipe for record and proof of service.

Order of July 13, 1950 that the report of proceedings herein be approved and ordered filed.

REPORT OF PROCEEDINGS

Report of proceedings.

Report of proceedings at the trial of this cause before Judge Joseph H. McGarry, Judge of said Court, and a jury.

Present: Mr. Albert I. Zemel for the People and Mr. Maximilian J. St. George for defendant.

Opening statement by Mr. Zemel.

IVON HENRI LATIMER, testified for the people as follows:

My name is Ivon Henri Latimer. I live at 5031 Dorchester. I am a student at the University of Chicago,

second year of college, taking a liberal arts program. I met defendant the first time in the evening of January 6, 1950, at a meeting of the White Circle League called for eight o'clock. I heard about it over at school and I wanted to see what it was. I went there alone. The meeting was held in the Woodlawn Boys Club, 64th and University. At the door there was a young man who gave me a card 3 x 5, to put my name on and told me to give it to Mr. Beauharnais when I had filled it out with my name and address and phone number. I went to the table and met [fol. 4] Mr. Beauharnais who read off my name, Hank Latimer, and the address and telephone number. I shook his hand and he told me to sit on the right hand side of the room where seats were lined up. There were about 35 to 40 people there. Mr. Beauharnais spoke. He opened the meeting. He introduced himself as Joseph Beauharnais, president and founder of the White Circle League of America, that this was not a regular meeting of the league but a meeting for volunteers who would distribute literature and get these petitions signed on the following day. This was a Friday night and he wanted people to work on Saturday, standing on the street corner and he assigned every one a street corner. He took the 3 x 5 cards and called out people's names one by one and he gave them a pack of literature which contained 500 leaflets. He asked for volunteers to distribute literature. When he called the names of the people, he asked them to raise their hands to see who would volunteer. He asked what neighborhoods people would distribute them in. He said he wanted the loop area first and he asked the people whether they would take specific corners in the loop. I volunteered. He asked me if I would take Randolph and Michigan. I am not sure, but he finally assigned me to Monroe and Clark—I believe it was Monroe and Adams. It is written down. He wrote down the streets. He gave me a pack of literature containing 500 lithographs, with room for 25 names on each petition form.

People's Exhibit #1 for identification was given to me at that meeting. This is the same petition. He instructed each of the volunteers to sign their name at the top, when the petition was completed. He told us what the petition

was for. He said that this was to save and protect white neighborhoods. He did not explain what he meant by that. [fol. 5] He said that the literature of the White Circle League tells this, that if any one asks what the petition is about, you show them the placard. I was given two placards: one for the back and one for the front, with pins in them which said "Protect White Neighborhoods," I believe. I believe that is the placard there. That is the same placard, same sort of placard. He told us to wear one on the front, sort of like a bathing beauty contest, and one on the back when we passed out the literature. We were to pass out literature all day Saturday and when we got tired we should go home, but he would like to have us work six, seven, eight hours, and he wanted every one to start at nine o'clock in the morning on their street corner. He also gave us 500 leaflets.

Defendant's Exhibit 3 for identification is one of the leaflets he gave us at that meeting, I believe. I am not absolutely sure this was the one. I know it was either one or the other of these leaflets. Mr. Beauharnais wrote the handwriting on the corner of the binder before handing me the packet. He wrote down on it that I was to take Dearborn and Monroe, the corner I was to take. Dearborn and Monroe is written Randolph and Michigan. I told him that Randolph and Michigan was not as busy a corner as Dearborn and Monroe and he said, "Well then you take Dearborn and Monroe," and he wrote that down, and then he gave me the whole packet of literature consisting of this binder. He told us these petitions should be filled out; that when people walked by along the street you are to ask them if they would like to sign this petition. If they ask what it is about you point to your placard, this placard, and to tell them that it is to preserve and protect white neighborhoods, [fol. 6] that if they want to know the purpose of the league and what the campaign is, you are to give them one of the leaflets. I believe that was the leaflet, but I am not sure. It was either that leaflet or another one signed by him at the bottom. (Counsel pointed to Exhibit 3 for identification).

Maybe you should put the State's Attorney on the stand, because he had the packet. Yes, those are the leaflets.

The Court: Now you say that is the leaflet?

The Witness: Yes, definitely.

Mr. Beauharnais said we should not talk to people while we are getting the petition signed, if they wanted to know what the White Circle League is about, what this petition campaign was about, we were to give them one of the leaflets that would explain it and if they decided that they didn't want to sign after reading the leaflet, we were to get the leaflet back. If they did sign the petition then we could give them a leaflet. You should give them a leaflet once they signed the petition. He also said that we shouldn't collect any memberships at all, collect any money. We should not collect any money for memberships. We shouldn't collect any money at all. Beauharnais said that if a Negro came up to any one getting the petition signed, he should not let the Negro sign this. Mr. Beauharnais also said "We don't want any violence while these petitions are being passed out; we just want to get a lot of signatures and we want to get a lot of people to see our literature, and we want to get a large number of members." He said that the membership was in the thousands. He couldn't say how many; that they wanted other people, other groups to think that it was ten or twenty times as large as it is. He said the dues were $1.00, I guess for a year. He also said that those getting the signatures should not let a crowd [fol. 7] gather, shouldn't disrupt the movement of people on the sidewalk.

No one except Mr. Beauharnais got up and talked. He gave a very short speech and started giving people the packets and after he got through with that he asked for questions and people asked a lot of questions about what they should do. He said that if a policeman inquired, then we should show him a letter in the packet "To whom it may concern". The letter I am referring to is the letter that was given to me. He said that the legal department of the White Circle League had called the police department and asked if these petitions could be passed out. He did not say who his legal department was. The meeting adjourned about 9:50, 9:30 or 9.45.

Beauharnais took each of the pieces of literature out of the packet and showed them to the people. No one read it out loud. I do not believe any one got a chance to read it at

the meeting because people were asking him a lot of questions about how they should distribute. The meeting adjourned about 9:45. I took all my paraphernalia and left.

There were about four or five maybe six plain clothes policemen—not quite that many—two downstairs, that is on the second floor as I came up and there were a couple I guess on the third floor, and three or four uniformed police. And there was also a reporter from the Bridgeport News, and some one said that there was a man there from the Tribune. All that I have testified to happned, in the City of Chicago, County of Cook, State of Illinois.

Cross-examination of Mr. Latimer.

By Mr. St. George:

I went over to this meeting to observe for myself what this organization was. I hate the communist party. I [fol. 8] learned about this meeting at the University of Chicago. I heard some people discussing the meeting. One of these was Marcus Goff, a friend of mine. Another one I think was a guy named Bob Blauner. Both were university students.

That is not the first time I heard about the White Circle. I heard about it before at home from my father, Ira Latimer, the executive director of the Chicago Liberties Committee. I gave this package of material not to the State's Attorney's office but to my father. I know what he did with it. He took it to the State's Attorney's office. I did not go with him, so actually I do not know whether he took it to the State's Attorney's office.

I read all the literature before I gave it to my father and then I gave it to him. I believe he read it in my presence. He read parts, looked at it for about twenty minutes, and we talked about it for quite a while during that time. He was talking to me while he was looking at it and I think this took about an hour and fifteen minutes, something like that.

At the meeting I do not know whether I signed the card or not; I think I printed my name at the top so that they could read it and at that time I had some idea it was for a petition campaign. My father came home that night about 12 o'clock. It was Friday night, January 6th.

At the meeting I had no opportunity to look at this literature. During the meeting I looked at it. I did not get a chance to read it. At the meeting I read the letter "To whom it may concern". The literature was handed to us during the meeting.

After the literature was distributed they had a question period which lasted probably a half an hour. I was listening to the questions, and up to that time I had no op- [fol. 9] portunity to examine the literature at the meeting. I did not have time to fully, carefully read it. I did not get a chance to read the leaflet which was the most important thing. People's Exhibit 2, for identification, was in the packet. I pulled all the stuff out to look at it. I also glanced at People's Exhibit 3, which came in an envelope, I believe, and People's Exhibit 1, for identification.

I did not go out the next morning to distribute the literature.

Q. So as a matter of fact the only purpose you had in going to that meeting was in getting some goods on Beauharnais?

Mr. Zemel: I object to that.
The Court: Objection sustained.

I believe I learned at the meeting that the White Circle League of America was a corporation.

Q. And you knew the purpose of its organization?

Mr. Zemel: I object.
The Court: Sustained.

I did not know that that meeting was called by special invitation. No one asked me for an invitation, for a membership card or anything. The boy just gave me a card. I did not hear anything about the invitation to the meeting going to members only.

Q. Didn't your father tell you about this meeting?

Mr. Zemel: I object.
The Court: Sustained.

I think there were plainclothes men at this meeting. They looked like plainclothes men. They looked like policemen. Some had uniforms, some didn't. Those without uniforms I thought were plainclothes men. The uniform

men were on the third floor where the meeting was, right in front of the door, about three or four of them. There [fol. 10] were about four or five detectives; only two on the second floor and none on the first floor. On the first floor they had their regular Friday night dance.

Mr. Beauharnais asked me where I wanted to work and I said in the loop. He started to assign me to Randolph and Michigan. I told him that Randolph and Michigan was not a busy corner. I thought this was an organization for the betterment of the community and that I would work on Dearborn and Monroe. I said I would take that corner. I did not work. I was not paid, nor was I promised any pay for distributing this literature. I do not know whether it was from Mr. Goff or from my father that I first heard about this meeting. I don't remember whether I heard about this meeting from my father or from the boys at school first. They were the ones where I heard where it was going to be and the time and that information. I do not know whether the boys received an invitation. We just talked about a meeting.

CLIFFORD MCFARLAND testified for the people as follows:

My name is Clifford McFarland. I live at 4142 South Park. I am employed by my father's restaurant at 55th and South Park three days a week and in a haberdashery store the latter three days of the week.

Thereupon, over objection of counsel for defendant, the court allowed in evidence People's Exhibits 1, 2 and 3, for identification, as People's Exhibits 1, 2 and 3.

People's Exhibit 1 is as follows:

[fol. 11] PEOPLE'S EXHIBIT 1

The White Circle League of America, Inc.
Chicago 2, Phone Franklin 2-8533.

"Dedicated to protest and maintain the Dignity, Social Edicts, Customs and Rights of the White Races in America".

Petition

To the Honorable Martin H. Kennelly and City Council of the City of Chicago:

Whereas, the white population of the City of Chicago, particularly on the South Side of said city, are seething, nervous and agitated because of the constant and continuous invasion, harassment and encroachment by the Negroes upon them, their property and neighborhoods and—

Whereas, there have been disastrous incidents within the past year, all of which are fraught with grave consequences and great danger to the Peace and Security of the people, and

Whereas, there is great danger to the Goyernment from communism which is rife among the Negroes, and

Whereas, we are not against the negro; we are for the white people and the white people are entitled to protection:—

We, the undersigned white citizens of the City of Chicago and the State of Illinois, hereby petition the Honorable Martin H. Kennelly, Mayor of the City of Chicago and the Alderman of the City of Chicago, to halt the further encroachment, harassment and invasion of white people, their property, neighborhoods and persons, by the Negro— [fol. 12] through the exercise of the Police Power; of the Office of the Mayor of the City of Chicago, and the City Council.

Address

(The person securing these petitions should sign on above line).

There follows 25 lines for names.

(When filled, mail to White Circle League of America, Inc.—Suite 808—82 W. Washington St., Chicago 2, Illinois)

People's Exhibit 2

People's Exhibit 2 is a placard with the following words in large type, "Preserve and Protect White Neighborhoods. Sign Petition Here Sponsored by the White Circle League of America".

(Here follows 1 Photolithograph, side folio 13).

PRESERVE and PROTECT WHITE NEIGHBORHOODS!

FROM THE CONSTANT AND CONTINUOUS INVASION, HARASSMENT AND ENCROACHMENT BY THE NEGROES

(WE WANT TWO MILLION SIGNATURES OF WHITE MEN AND WOMEN)

PETITION
To The Honorable Martin H. Kennelly
and City Council of the City of Chicago.

WHEREAS, the white population of the City of Chicago, particularly on the South Side of said city, are seething, nervous and agitated because of the constant and continuous invasion, harassment and encroachment by the Negroes upon them, their property and neighborhoods and —

WHEREAS, there have been disastrous incidents within the past year, all of which are fraught with grave consequences and great danger to the Peace and Security of the people, and

WHEREAS, there is great danger to the Government from communism which is rife among the Negroes, and
WHEREAS, we are not against the negro; we are for the white people and the white people are entitled to protection: —

We, the undersigned white citizens of the City of Chicago and the State of Illinois, hereby petition the Honorable Martin H. Kennelly, Mayor of the City of Chicago and the Alderman of the City of Chicago, to halt the further encroachment, harassment and invasion of white people, their property, neighborhoods and persons, by the Negro — through the exercise of the Police Power; of the Office of the Mayor of the City of Chicago, and the City Council.

WANTED

ONE MILLION SELF RESPECTING WHITE PEOPLE IN CHICAGO TO UNITE UNDER THE BANNER OF THE WHITE CIRCLE LEAGUE OF AMERICA to oppose the National Campaign now on and supported by TRUMAN'S INFAMOUS CIVIL RIGHTS PROGRAM and many Pro Negro Organizations to amalgamate the black and white races with the object of mongrelizing the white race!

THE WHITE CIRCLE LEAGUE OF AMERICA is the only articulate white voice in America being raised in protest against negro agressions and infiltrations into all white neighborhoods. The white people of Chicago MUST take advantage of this opportunity to become UNITED. If persuasion and the need to prevent the white race from becoming mongrelized by the negro will not unite us, then the aggressions . . . rapes, robberies, knives, guns and marijuana of the negro, SURELY WILL.

The Negro has many national organizations working to push him into the midst of the white people on many fronts. The white race does not have a single organization to work on a NATIONAL SCALE to make its wishes articulate and to assert its natural rights to self-preservation. THE WHITE CIRCLE LEAGUE OF AMERICA proposes to do the job.
WE ARE NOT AGAINST THE NEGRO! WE ARE FOR THE WHITE PEOPLE!
We must awaken and protect our white families and neighborhoods before it is too late. Let us work unceasingly to conserve the white man's dignity and rights in America.

THE WHITE CIRCLE LEAGUE OF AMERICA, INC. - Joseph Beauharnais, Pres. - FR 2-8533, Suite 808, 82 W. Washington St.
VOLUNTEERS NEEDED TO GET 25 SIGNATURES ON PETITION! COME TO HEADQUARTERS!

I wish to be enrolled as a member in THE WHITE CIRCLE LEAGUE OF AMERICA and I will do my best to secure ten (10) or more members.

THE FIRST LOYALTY OF EVERY WHITE PERSON IS TO HIS RACE. ALL THE COMBINED PRO NEGRO FORCES HAVE HURLED THEIR ULTIMATUM INTO THE FACES OF THE WHITE PEOPLE. WE ACCEPT THEIR CHALLENGE.

THEY CANNOT WIN!

IT WILL BE EASIER TO REVERSE THE CURRENT OF THE ATLANTIC OCEAN THAN TO DEGRADE THE WHITE RACE AND ITS NATURAL LAWS BY FORCED MONGRELIZATION.

THE HOUR HAS STRUCK FOR ALL NORMAL WHITE PEOPLE TO STAND UP AND FIGHT FOR OUR RIGHTS TO LIFE, LIBERTY AND THE PURSUIT OF HAPPINESS.

JOSEPH BEAUHARNAIS.

APPLICATION FOR 1950 MEMBERSHIP
THE WHITE CIRCLE LEAGUE OF AMERICA, INC.
(Not For Profit)

Mail To —
THE WHITE CIRCLE LEAGUE OF AMERICA Inc.
82 W. Washington St.
Chicago 2, Illinois
Tel. FR 2-8533

DATE _____ **19**____

- ☐ **Membership** ____ **$1.00**
- ☐ **Subscripton to Monthly Magazine (WHITE CIRCLE NEWS) per year** ____ **$3.00**
- ☐ **Voluntary Contribution $**_____
- ☐ **I can volunteer some of my time to aid the WHITE CIRCLE in getting under way.**

(SIGNED) (Print Name) _____
NAME _____
ADDRESS _____ **PHONE** _____
CITY _____ **STATE** _____
(Note: Tear Off and Mail to Headquarters wth Your Remittance)

[fol. 14] On January 7, 1950, I saw this sign, Exhibit 2, on a man standing on the corner of State and Madison. The sign was across the front. I only saw one. I came out of the subway on the southwest side; this man, who wore this sign, and two other fellows were talking—one appeared to be signing something, giving a pencil back. I didn't see a thing what he was signing. It didn't resemble this (indicating) from a distance.

I went up to that man, a man in front of me met this fellow first and he made a motion, made a couple of steps toward him with this package in his arm and loose sheet in his hand. This (Exhibit 3) resembles the sheet in his hand. That is what I saw.

The man who met him before I did didn't stop. He just lifted this sheet out of his hand and began to walk going north on State. When I walked up to the man with the sign he didn't see me—when he turned around he made a motion with his bag in his arm towards me and then pulled it back and walked away and said that I wouldn't be interested.

The man who was in front of me had crossed the street by that time and he looked back in our direction and sort of dropped this sheet to the street. I ran across the street and picked it up and went in the drug store and had a cup of coffee. The sheet that I picked up is the same as People's Exhibit 3. It is the same thing.

I picked up the sheet, went in the drug store and had a cup of coffee and read it carefully and completely.

After reading it completely and thoroughly, and finding out its contents, I reported it to the Chicago Civil Liberties Committee.

Some time thereafter I signed this information which bears my signature. I signed it at 11th Street Court [fol. 15] before Judge Gutknecht. All this I testified to happened in the City of Chicago, County of Cook, State of Illinois.

Cross-examination of Mr. McFarland.

By Mr. St. George:

The amended complaint bears my signature. I signed it before Judge McGarry. I am sure that Exhibit 2 is the

exact item I saw on the chest of this man distributing the literature. It was like that; I didn't say it was that one; it was one similar to that. Exhibit 2 is one similar to that one I saw on the chest of the man distributing the literature. I was very close to him, around the corner. I could see the petition, Plaintiff's Exhibit 3. He was holding it like this. I saw what was on it. I stooped down and looked at it. People's Exhibit 3 is the paper I picked up from the street. I am sure about that—positive.

Mr. Zemel read to the jury Exhibits 1 and 3, which appear in Rec. 81 and 83.

Ulysses Grant Dailey testified for the State as follows:

My name is Ulysses Grant Dailey. I reside at 364 East 48th Street, Chicago. I am a surgeon and physician, practicing general surgery, which is my specialty. I am licensed as a physician and surgeon in the State of Illinois since July, 1906. I belong to the Chicago Medical Society, Illinois State Medical Society, The American Medical Association, Fellow of the Institute of Medicine of Chicago, Diplomat of the American Board of Surgery, Fellow of the American College of Surgeons and the International College of Surgeons.

[fol. 16] The American College of Surgeons was founded in 1913 in Chicago and consists of leading surgeons in the United States and represents the guild of surgeons. It is the repository not only of surgical science, but of surgical ethics. White people as well as Negroes are members.

The International College of Surgeons, founded in Geneva, is comprised of surgeons, is international in scope and has the same ideals and ethics as those of the American College of Surgeons.

I graduated from the Northwestern University Medical School in Evanston and Chicago. In 1906 I taught anatomy at Northwestern University Medical School and clinical surgery at the Chicago Medical College, and post-graduate surgery at the Meharry Medical College in Nashville, Tennessee. I confine my practice to surgery. I have been a visiting lecturer in Port-O-Prince, Haiti; Kingston, Jamaica, on one occasion. I have not lectured in Europe.

I have studied in Berlin in 1912 and in Paris, Vienna, 1926 and 27.

I have visited clinics of all the European countries as well as the United States. I have been to Liverpool, to Manchester, to London, to Paris, to Rome, and to Naples, besides studying in Berlin and Vienna.

I was never convicted of any crime nor ever accused of any crime nor accused of any invasion of any kind.

(Mr. St. George objected to all the testimony as to the qualifications of the witness and whether or not he was ever convicted of or accused of any crime. The court overruled all objections).

I am a member of the Negro race, an American Negro. I am 65 years, I guess.

I was never convicted of any crime or charged with any crime, nor with any invasion or harassment or any encroachment of anybody's rights.

[fol. 17] I have never been accused of any mongrelization, rapes, robberies, knives, guns and marijuana.

I have lived continuously in Chicago since 1902, shorter periods earlier. I would say with intervals since 1893. I was never accused of hurling into faces of white people, certain challenges, hurling my ultimatum into the faces of white people, forcing them to accept my challenge, never accused of anything similar to it, nor accused of depriving anybody of their rights to life, liberty and the pursuit of happiness.

Cross-examination.

By Mr. St. George:

I am not the defendant in this case. I read portions of "Black Metropolis" by St. Clair Drake.

Argument on motion to strike Dr. Dailey's testimony.

The Court: Motion is denied.

Mr. St. George offers to prove that the word "invasion" is improperly used, that in the "Black Metropolis", page 77, paragraph one states: "The black belt became the black metropolis in the twenty years between the close of the First World War and the fifty or sixty thousand negroes who came to the city during the Great Migration had no

intention of returning to the South. Despite bombs and riots they insisted upon a place to live within the city, and upon room for friends and relatives who followed them North and from the children who would be born in Midwest Metropolis. By 1925, the city had adjusted itself to the obvious fact that a rapidly growing negro community was there to stay. Negroes had secured a foothold.

'Although Negroes had to fight block-by-block for houses during the war years, they did not have any trouble getting jobs. Negroes were either fired outright or asked to work at very low wages. White workers became apprehensive over a large pool of unorganized negroes that could be used [fol. 18] to keep wages low. The same year negroes were used to break a stockyards strike and although they became permanently established in that industry they earned the bitter antagonism of Irish, Polish and Italian workers.

'The new white-collar middle class and thousands of frugal skilled and semi-skilled workers rushed to buy or build homes in the suburbs, seeking fresh air and avoiding high taxes. They left the heart of the city to the poor, the new immigrants, the underworld, the corrupt political machine, and the negroes. Thousands of other middle-class people stayed within the city limits to stew in bitterness over the foreign-born workers and negroes who rented and bought the homes of their neighbors who had moved to the outskirts.''

Mr. St. George: That is with reference to the word "invasion".

The Court: That offer will be rejected. The objection is sustained.

Mr. St. George: Is the court going to permit me to show by this witness, if I can, that crime is rampant among the negro?

The Court: No; you offer to prove that question?

Mr. St. George: Yes.

The Court: The offer is rejected.

Mr. St. George: And that they have spread out from small groups on the south side to a large group on the south side and the west side, and in some places on the near north side.

The Court: Presuming that you are right about it, I still will reject the offer.

Mr. St. George: I want to show by this witness . . . that there were rapes, robberies, and knives, guns, marijuana by the negro—that is, marijuana used by the negro. [fol. 19] The Court: Same ruling—rejected.

Mr. St. George: I want to show by him further that the object of mixing, of having social dances and meeting the whites is to mongrelize the whites.

The Court: Same objection, I assume—same ruling.

Mr. St. George: I wish to show by him that he knows of very many cases of rapes, murders, and the use of marijuana by the negro—that is, marijuana used by the negro.

Mr. Zemel: Still objectionable.

The Court: Same ruling.

Mr. St. George: I can't ask him that question?

The Court: I don't think it is proper.

HARRY B. DEAS testified for the State as follows:

My name is Harry B. Deas. I reside at 6532 Drexel. I am a captain of police of the City of Chicago. I have been captain since August 28, 1943. I have been on the police force altogether thirty-five years. I was patrolman from 1915 to July 1, 1938, about twenty-three years. I was promoted to sergeant and was a sergeant from July 1, 1938 to February 15, 1943; then promoted to lieutenant in 1943; and acting captain from August 28, 1943. Then I was made a permanent captain on March 31, 1945. I have lived in Chicago since 1904, forty-six years.

I have never been convicted of any crime in Chicago or anywhere else.

Mr. St. George: May my objection stand to all of this evidence.

The Court: Let the record so show and the objection is overruled.

I was never charged with any invasion or harassment or encroachment of any person's rights, or with any aggression, rapes, robberies, knives, guns and marijuana. I was [fol. 20] never a defendant in any kind of case of the type mentioned. I never had any trouble with any white person. I was never accused of depriving any person of their rights to life, liberty and the pursuit of happiness.

At the present time I am assigned to 454 East 35th Street, from Stanton Avenue, where I command. I have 112 men. There are eight-hour shifts, twenty-four hour day. There are eight-hour shifts, but they are always subject to call twenty-four hours a day. I am a member of the negro race. In my command there are 112 men of which 22 are negroes and 76 are white patrolmen; also, 3 white lieutenants and 10 police sergeants, of which 7 are white and 3 are negroes. None of the negro sergeants and negro police officers in my command have criminal records. They would not be in the department if they had a record. They are carefully screened, fingerprinted and taken down to the FBI. If there is a record against them they are dropped. In the Chicago police force there are 173 negro patrolmen. In addition there are an additional amount who are sergeants and captains. There are 9 sergeants, 1 lieutenant and 1 captain, myself, 4 police women and 4 matrons that are colored. None of these people have any police records of any kind. I am pretty sure they have not. They would not be in the department. I think the Chicago Park District has quite a number—around 30 I imagine, negro officers. None of them are sergeants or lieutenants.

Cross-examination.

By Mr. St. George:

Officer William B. Murphy was in my command. I do not know who killed him. I know he was killed.

Q. Was it by whites or by blacks?

Mr. Zemel: I object to that Your Honor.

[fol. 21] The Court: Sustained.

Mr. Zemel objects and the court sustains the objections to any question by Mr. St. George as to whether or not the witness ever heard of crimes committed by negroes.

The Court: Do you want to make an offer?

Mr. St. George: Yes, same offer that I made before.

The Court: All right, let the record show that the offer is rejected and the objection is sustained and the jury will disregard those questions that were asked.

Mr. St. George: Do you know whether or not the negro population in Chicago has increased in the past ten years?

Mr. Zemel: I object.

Redirect examination.

By Mr. Zemel:

I never saw People's Exhibit 3 before.

ROBERT CROSPEY testified for the State as follows:

My name is Robert Crospey. I live in Woodale, Illinois. I am a professor of English at Roosevelt College, Chicago. I have a B. A. degree from Columbia University, an M. A. from Columbia University and a P. H. D. from Ohio State University. I have been a teacher of English for nine years now and a professor for three of those years. I taught for three years at Ohio State University and I taught at Monticello College in Albine.

To tell the meaning of the words "forced mongrelization" you would have to explain the context in which these words are used.

Mr. St. George: Those words are of common usage in the English language * * * They don't have to have a professor explain it.

[fol. 22] The Court: I agree with you.

Mr. Zemel: I will retract that, Judge. I do not wish to go any further, if your Honor feels that way, the State rests.

The Court: The State rests. Proceed with the defense.

Thereupon, the defendant, moved the Court, at the conclusion of the testimony on behalf of the People of the State of Illinois, to instruct the jury to find the defendant not guilty, and filed a motion, in writing, to find the defendant not guilty.

The Court: Motion by the defendant at the conclusion of the People's case to instruct the jury to find the defendant not guilty.

(Argument by counsel on said motion.)

The court denied said motion; to which action of the Court, defendant then and there duly excepted.

JOSEPH BEAUHARNAIS testified in his own behalf as follows:

My name is Joseph Beauharnais. I live at 10425 South Christiana, where I have lived four months. I do not wish to divulge where I lived prior to that. I am engaged in directing an organization known as the White Circle League of America, Inc., of which I am president. The corporation was organized November 9, 1949, under the laws of Illinois. The purpose of this organization is to maintain and safeguard the dignity, social edicts, customs, heritage, rights and way of life of the white race in America.

Q. Is this organization anti-Negro?

Mr. Zemel: I object to that; I move that it be stricken and the jury instructed to disregard it.

The Court: Objection sustained. It may be stricken and the jury will disregard it.

I published the fact that the organization is not anti-[fol. 23] Negro and that stand appears in the lithograph introduced in evidence. Exhibits 1, 2 and 3 were prepared under my direction.

Q. What is the purpose of these exhibits?

Mr. Zemel: I object to the purpose.

The Court: Sustained.

On January 6, 1950, I had a meeting at the Chicago Boys Club at 64th and University in a room about half as large as this room, 25 x 35. I sent out a notice for this meeting to a part of our total membership. There were about thirty-five present. The witness Latimore referred to himself as Hank Latemore. I called Hank Latemore and he answered to that name Latemore. He is not a member. I asked him if he were a member and he said no, he was not a member. I said "How did you get into this meeting, because it is by invitation only? And he said, "I heard about it", and he would like to help in the cause, he would like to help gather signatures to this petition, so I accepted his gesture of helpfulness on face value, that he was sincere.

After I had given the general instructions to that group of volunteers, who were to take positions at certain intersections in Chicago, and then I came to Mr. Latimore's name, asked him what intersection he would like to stand at

and he said he would prefer to work at Monroe and Dearborn because he was acquainted there. So he was assigned to Monroe and Dearborn.

I gave him a package of material. I told him that any of these leaflets that were not handed out, to be sure that they were mailed back or delivered in person within twenty-four hours to our headquarters, which he failed to do.

I first saw Mr. McFarland yesterday afternoon when he took the witness stand. I was not acquainted with him. [fol. 24] I did not hand any of this literature out myself on any public street in Chicago. I do not know what my workers did about handing out that literature. The petition part of Exhibit 3 was prepared by an attorney, and the other part of it was prepared by me.

Q. In the first part of Exhibit 1 you use the word "Invasion of the Negroes upon property in white neighborhoods". Can you explain what you meant by "invasion"?

Mr. Zemel: I object.

The Court: Sustained.

Mr. St. George: Had you any reason to use the word "invasion" in Plaintiff's Exhibit 1?

Mr. Zemel: I object.

The Court: Objection sustained. Strike the answer.

Mr. St. George: You say that: "Certain incidents in the last year took place fraught with great consequence and great danger to the peace and security of the people"? What did you have in mind when you wrote that?

Mr. Zemel: I object.

The Court: Sustained.

Mr. St. George: Did you have any proof——

Mr. Zemel: I object to this whole line of examination.

The Court: Objection sustained.

St. George: In the third paragraph you have: "Whereas there is great danger to the government from Communism, which is rife among the Negroes". What proof, if any, did you have for that statement?

Mr. Zemel: I object to that.

The Court: Sustained.

Mr. St. George: May I submit——

The Court: I am afraid I will have to stop you.

[fol. 25] Mr. St. George: The Court sustains all objections to this line of questioning?

The Court: Yes.

I am 53 years old, a widower. I have one son, 27 years old. I was in the First World War. I served in the Army as a number one aircraft machine gunner in France in the First War. For forty years I have made a very close and practical study of the status of the Negro here in Chicago.

Q. Did you have any reason to form this organization of the White Circle League?

Mr. Zemel: I object.

The Court: Sustained.

In 1940 there were 277,000 Negroes in Chicago.

Q. And do you know how many there are at the present time?

Mr. Zemel: I object.

The Court: Sustained.

This is about the second time I have been in a court room. I was never convicted of any crime or misdemeanor. I was in the Federal Court in 1945 in a civil matter. I did not on January 7th distribute that paper in a public place.

Mr. St. George: Was everyone who appeared admitted (to the meeting)?

Mr. Zemel: I object.

The Court: Objection sustained.

There was some one at the door who checked in those who came in. He was a young man assigned to have each one fill out a 3 x 5 inch index card with their name, address and telephone number. There were policemen there; they were standing at the entrance to the room, just as if they would stand at the door and out there by the corridor. There were three uniformed officers. This meeting was held on the fourth floor. These three policemen were on the [fol. 26] landing just outside of the door, and they stood there observing people that came in. There were no policemen on the lower floors.

Q. Was the meeting called for the public generally?

Mr. Zemel: I object.

The Witness: No sir.

The Court: Sustained. The jury will disregard the answer.

Mr. St. George: Did you examine district 5?

Mr. Zemel: I object.

The Court: Sustained similar objections to questions concerning other districts.

Mr. St. George: Now, personally, have you any animosity against the Negro?

Mr. Zemel: I object.

The Court: Sustained.

Mr. St. George: Have you in writing expressed your public opinion as to the Negro?

Yes.

Mr. Zemel: I object to that.

The Court: Yes. Sustained.

Cross-examination.

By Mr. Zemel:

I never saw Clifford McFarland in my life until yesterday. I did not see him Monday. Yes, I recall that I was in Room 1123, City Hall, on March 7, 1950, at a hearing on a motion. I did not know the man who signed the complaint. I was never in court before except on some civil matter in the Federal District Court. My understanding is that there is a proceeding pending in the state courts against the White Circle League of America instituted by the State of Illinois to revoke their charter. I have no idea when that [fol. 27] case was filed. I have been notified. It is pending. I do not know when it was filed. It was filed this year. I don't recall what month. I have never been in Court on that case. When it will be called I have no idea. I have retained lawyers to represent the White Circle League.

On January 6, 1950, I distributed this literature to about twelve people and the four items that comprise the exhibits. I assigned them to various street corners in Chicago. I did not tell them to pass this literature out to people who pass on that corner. I told them to wear this sign across the chest. I did not tell these people to have people sign this petition which is in evidence as People's Exhibit 1. I did not tell Ivon Latimore to have people sign this petition who passed this corner.

The office of the White Circle League is located at 10 N. Clark Street. I moved to 10 N. Clark Street on February 16, 1950, and until February 16, 1950, I was located at 82 W. Washington Street. I did not send an invitation to Hank Latimore informing him of the meeting on January 6; yet he was admitted. There was nothing secret about the meeting.

Redirect examination.

By Mr. St. George:

Q. In this literature, Plaintiff's Exhibit 3, that you composed, did you have any intent to expose the Negro citizens of Illinois and hold them in contempt and derision?

Mr. Zemel: I object.

The Court: Objection sustained.

Mr. St. George: In view of the ruling of the Court on certain matters, I wish to make an offer of proof on the matters that the judge has not allowed me to go into; namely, that if Mr. Cosnow of the Chicago Crime Commission were called, he would testify that District 5 has 148,000 [fol. 28] residents, of which 98% is Negro. I offer to prove that District 4 is 96% Negro; District 3 is 90%; District 27 is 60%; and reported offenses in these districts were as follows: 5th District, 384; 4th District, 292; 3rd District, 135; 27th District, 235. As against that we have white districts; that is District 36, 98% white, offenses reported 116; District 32, 99% white, 133 offenses reported.

I wish further to prove by Frank Lindstrom that his brother was shot on the street by a Negro; that his mother was pushed down by a person who ran up behind her in broad daylight half a block in front of a church just to take her purse on April 18, 1948.

I wish further to show by him and other witnesses that when a Negro family moves into a district or a block, real estate values immediately go down; that the home of Frank Lindstrom depreciated in value by such a figure, namely, $2,000.00.

The Court: Is that the proof offered?

Mr. St. George: That is the proof offered.

Mr. Zemel; It is all objectionable as immaterial, your Honor.

The Court: The offer is objected to and the objection of the State is sustained.

Mr. St. George: Now I want to make a motion at the end of all the testimony for a directed verdict.

The Court: The defense rests. Does the State rest? Do you have anything in rebuttal?

Mr. Zemel: The State rests.

The Court: Both sides rest.

(Which was all the evidence offered and received on the trial of said cause).

MOTION FOR DIRECTED VERDICT AND DENIAL THEREOF

Mr. St. George: Now I make a motion for a directed verdict at the end of all the testimony. And I wish to be heard on it.

[fol. 29] (Whereupon argument on motion for directed verdict followed).

Motion to instruct the jury to find the defendant not guilty.

The Court denied said motion to instruct the jury to find the defendant not guilty, to which defendant then and there duly excepted.

The Court: Motion is denied.

The Court: The Court has heard the argument on instructions tendered by the State and the Court rules that for the State instructions Numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13 and 14 will be given.

Mr. St. George: I object to State's Instruction Numbers 1, 2 and 3.

The Court: Objections are overruled. The Court has marked Instructions offered by defendant refused being Numbers 1, 3, 7, 8, 9, 11, 12, 15, 16, 17 and has given Instructions Numbers 2, 4, 5, 6, 10, 13, 14 and 16.

Thereupon, Mr. Zemel and Mr. St. George argued to the jury.

Thereupon, the Court gave to the jury the following instructions:

PLAINTIFF'S REQUESTED INSTRUCTIONS GIVEN TO JURY

At the request of counsel for the People the Court marked "Given" and gave to the jury each of the following instructions, in writing, numbered 5, 1, 2, 4, 4, 6, 7, 8, 10, 11, 12 and 9.

(5) The jury is the sole judge of the facts in the case, the credibility of the witnesses, and the weight to be given to their testimony. And, in anything that the court may have said throughout the trial or anything that the court may say in the instructions, the court has not intended and he does not now intend to express any opinion upon the facts of the case, upon the credibility of the Witnesses, or the weight to be given to their testimony. On the other hand, [fol. 30] the court is the sole judge of the law in the case, and it becomes the duty of the jury to follow the law as it is given to it by the court in his instructions. You have no right to disregard it, or disregard any portion thereof, but you are bound to take the whole of it as it is given to you by the court and apply it to the case.

(1) The Court instructs the jury that if you find from the evidence that the defendant, Joseph Beauharnais, did on or about January 7, 1950 manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place the lithograph, which was allowed in evidence in this case as Peoples Exhibit Number 3, then you are to find the defendant guilty and fine him not less than $50.00 nor more than $200.00.

(2) Circumstantial evidence in criminal cases is the proof of such facts and circumstances connected with or surrounding the commission of the crime charged as tend to show the guilt or innocence of the party charged, and if the facts and circumstances shown by the evidence in this case are sufficient to satisfy the jury of the guilt of the defendant beyond a reasonable doubt, then such evidence is sufficient to authorize the jury in finding the defendant guilty. The law demands a conviction wherever there is sufficient legal evidence to show the defendant's guilt beyond a reasonable doubt, and circumstantial evidence is legal evidence.

(3) The jury are instructed that it is not proper for

counsel in a case to state anything in argument bearing upon a question of fact and claimed to be within his personal knowledge or which may have been stated to him by others not witnesses in this case. You are, therefore, instructed to disregard such statements, if any have been made, and to make up your verdict upon the evidence [fol. 31] actually given in the case, without placing any reliance upon or giving any consideration to any statements of counsel not supported by the evidence.

In determining any of the questions of fact presented in this case, you should be governed solely by the evidence introduced before you.

(4) If the jury, after considering all the evidence in this case, find from the evidence that any witness has, or witnesses have, knowingly, wilfully and corruptly testified falsely to any fact material to the issue in this case, they have the right to entirely disregard the testimony of such witness or witnesses, except in so far as his or their testimony is corroborated by other credible evidence or by circumstances in evidence.

(6) The Court further instructs you that under your oaths you should not allow sympathy or prejudice to influence you in the least in finding your verdict in this case. In your deliberations you should not be influenced by anything other than the law and the evidence in the case.

(7) The Court instructs the jury that the jury are the sole judges of the credibility of the witnesses. In judging the credibility of the witnesses in this case, you should carefully scrutinize the testimony given, and in doing so, you may consider all the circumstances under which any witness has testified, his demeanor and manner while on the stand, his interest, if any, in the outcome of the case, the relations which he bears to the State or to the defendant, the manner in which he might be affected by the verdict, the extent to which he is contradicted or corroborated by any other credible evidence.

(8) The court instructs the jury, that a doubt to justify an acquittal must be reasonable, and it must arise from a [fol. 32] candid and impartial consideration of all the evidence in the case; and is such that, were the same kind of a doubt interposed in the graver transactions of life, it

would cause a reasonable and prudent man to hesitate and pause.

If, after considering all the evidence, you can say you have an abiding conviction of the truth of the charge, you are satisfied beyond a reasonable doubt.

(10) The court instructs the jury, as a matter of law, that the rule which clothes every person accused of crime with the presumption of innocence, and imposes upon the State the burden of establishing his guilt beyond a reasonable doubt, is not intended to aid any one who is in fact guilty of crime to escape, but is a humane provision of law intended, as far as human agencies can, to prevent an innocent person from being convicted.

(11) The jury are instructed, as a matter of law, that circumstantial evidence is competent, legal evidence and if the minds of the jury are convinced of the truth of the charge in the information in this case beyond a reasonable doubt, from facts and circumstances in proof, this is sufficient to authorize a conviction.

(12) The court instructs the jury, that as a matter of law, that in a criminal case the jury have a right to weigh and examine the evidence closely and carefully in the light of the common knowledge and experience of mankind and you have a right to take into consideration the common knowledge and experience of mankind and the course of the laws of nature in determining whether the evidence is reasonable or unreasonable or probable or improbable and in determining what weight it is entitled to receive.

And the court instructs you further, when the evidence is heard, jurors have a right to test its weight by their [fol. 33] knowledge and experience and their judgment derived from experience, observation and reflection. You are not bound to regard evidence precisely as given, but may consider its truth and weight by your knowledge of men, the affairs of life and the motives which influence persons. These are all proper and legitimate means of arriving at the truth in determining the issues in this case.

(9) The Court further instructs the Jury that these instructions are given and should be considered as one entire series, and each instruction should be considered in connection with all instructions bearing upon the same subject.

If, in putting in the evidence, or in argument, counsel for either party has made any statement not based upon the evidence, or if counsel made any statement which he afterwards withdrew, or which the Court afterwards struck out, the Jury should wholly disregard such statements.

To the giving of which instructions the defendant then and there duly excepted.

DEFENDANT'S REQUESTED INSTRUCTIONS GIVEN TO JURY

Thereupon, at the request of defendant, the Court marked "Given" and gave to the jury the following instructions, numbered 13, 2, 4, 5, 10, 14 and 6.

(13) Preliminary to your being accepted and sworn to act as jurors in this case, you were examined by counsel for the state and counsel for the defendant as to your competency and qualifications to act as jurors in this case. As a part of this examination each of you answered all questions asked you by both sides and your answers showed that you were competent and qualified to act as jurors and you were accepted as such jurors on the faith of the truth of your answers. The answers you then made to such ques-[fol. 34] tions in regard to your competency, qualifications, fairness, lack of prejudice and freedom from passion and sympathy, are as binding on you now as they were then and so remain binding upon you until you are finally discharged from further consideration of the case. It would be improper and unlawful for any of you to disregard those answers that rendered you competent jurors.

(2) The Court instructs the jury that the law is enforced and upheld just as much in a verdict of not guilty as in a verdict of guilty when the evidence fails to satisfy the jury beyond a reasonable doubt of guilt.

(4) The Court instructs the jury that while it is true that the legal presumption of innocence is designed to protect the innocent and not to assist or aid the guilty in escaping conviction, yet the Court further instructs you that the legal presumption of innocence is universal and ought to prevail in all cases as a complete and ample protection to every person accused of crime in such a way as to require the jury to find the accused not guilty, unless it is proved beyond all reasonable doubt by the facts and cir-

cumstances proved on the trial that the accused is guilty in manner and form as charged in the complaint.

(5) The jury are the sole judges of the credibility of the witnesses. Your verdict will not necessarily be determined by the number of witnesses testifying for either side. You may take into consideration the number of witnesses testifying in support of or against any fact or state of facts, the opportunities of the several witnesses for knowing the things about which they testify, their conduct and demeanor while testifying; their age, discretion and experience; their bias or lack of bias, their interest, if any, in the result of the trial, the probability or improbability of the truth of [fol. 35] their several statements; the relation which they bear to either side and the extent to which any witness is contradicted or corroborated by any other credible evidence, if at all, and any evidence that tends to shed light on his or her credibility.

(10) The Court instructs the jury that a reasonable doubt, within the meaning of the law, is such a doubt as would cause a reasonable, prudent, and considerate man, in the graver and more important affairs of life, to pause and hesitate before acting upon the truth of the matter charged or alleged.

(14) The defendant is a competent witness in his own behalf and you have no right to disregard his testimony from caprice, nor merely because he is the defendant. You are to treat him the same as any other witness, and subject him to the same tests, and only the same tests as are legally applied to other witnesses and while you have the right to take into consideration the interest he has in the result of this trial, you have also the right, and it is your duty, to take into consideration the fact, if such is the fact, that he has been corroborated by other credible evidence.

Thereupon, defendant requested the Court to give to the jury the following instruction, in writing, numbered 6:

(6) In giving these instructions, it is the intention of the court simply to instruct the jury as to the law applicable to the case, but it is not the intention of the court in the least degree to give the jury any opinion as to whether or not the defendant is guilty of the offense charged in the complaint, or to express any opinion as to the weight or suffi-

ciency of the testimony, or as to the credibility of any witness.

If you have heard any evidence in this case which the [fol. 36] court afterwards struck out, you are to wholly disregard.

DEFENDANT'S REQUESTED INSTRUCTIONS REFUSED

Thereupon, defendant requested the Court to give to the jury the following instructions numbered 15, 16 and 17, but the Court refused to give said instructions, to which ruling of the Court the defendant duly excepted.

(15) The jury is further instructed that even though the article complained of induced a condition of unrest and dissatisfaction with conditions as they are, or even stirred the reader to anger, still they must find the defendant not guilty unless they further find beyond reasonable doubt that the article complained of was likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest.

(16) The court instructs the jury that free speech and free press is guaranteed by the Constitution of the United States and also by the Constitution of the State of Illinois. A free press may best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. A free press is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech and of the press, though not absolute, are, nevertheless, protected against censorship or punishment unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance and unrest. There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas, either by legislature, courts or dominant political or com- [fol. 37] munity groups. No conviction can be had of the defendant in this case, even though the jury believe that the article complained of stirred people to anger, invited public dispute or brought about a condition of unrest.

(17) In order to find the defendant guilty in this case the jury must be convinced beyond all reasonable doubt of each and every one of the following items:

1) That on or about January 7, 1950, the defendant published, presented and exhibited the petition introduced in evidence and marked People's Exhibit 3.

2) That said defendant published, presented and exhibited said petition in a public place.

3) That said petition portrays depravity, criminality, unchastity or lack of virtue of citizens of the negro race and color.

4) That said petition exposes citizens of Illinois of the negro race and color to contempt, derision or obloquy.

If you do not find beyond a reasonable doubt any one of the foregoing items, you should find the defendant not guilty.

The foregoing were all the instructions requested, given and refused on the trial of this cause.

Thereupon, the jury rendered a verdict against the defendant as follows:

VERDICT

"We, the jury, find the defendant guilty as charged in the information number 50MC 28057 filed in the Municipal Court of Chicago and fine him the sum of $200.00." Signed by the foreman and eleven jurors.

Thereupon, the defendant moved the Court to vacate and set aside the verdict of the jury rendered and to grant a new trial, and for grounds of said motion, filed the following reasons, in writing:

[fol. 38] MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR FOR A NEW TRIAL

Motion—Defendant moves the Court for judgment notwithstanding the verdict, or, in the alternative, for a new trial, and for grounds therefor shows:

1. That Paragraph 471, Section 244a of Chapter 38 of the Illinois Revised Statutes is unconstitutional in that it violates the first amendment to the Constitution of the

United States and also Article 2, Paragraph 4 of the Constitution of the State of Illinois.

2. That Paragraph 471, Section 224a of Chapter 38 of the Illinois Revised Statutes is unconstitutional in that it violates the due process clause of the fourteenth amendment of the Constitution of the United States and also Section 2 of Article 2 of the Constitution of the State of Illinois.

3. That the right of defendant to manufacture, publish and present the lithograph in question (People's Exhibit 3) was protected by the first amendment to the Constitution of the United States and also by Article 2, Paragraph 4 of the Constitution of the State of Illinois, and by Section 17 of Article 2 of the Constitution of the State of Illinois.

4. Under the evidence at the end of the evidence for the People, it was the duty of the Court to direct a verdict for defendant without submitting the case to the jury.

5. Under the evidence at the end of all the evidence in this case it was the duty of the Court to direct a verdict for defendant without submitting the case to the jury.

6. That the lithograph in question (People's Exhibit 3) was not a violation of the statute in question.

7. That to attempt a charge of violation of said section of the statute by the publishing or exhibiting of the lithograph in question (People's Exhibit 3) is in violation of the due [fol. 39] process clause of the fourteenth amendment of the Constitution of the United States and the constitution of the State of Illinois.

8. The court improperly instructed the jury if they find from the evidence that the defendant, Joseph Beauharnais, did on or about January 7, 1950, manufacture, sell, or offer for sale, advertise or publish, present or exhibit in any public place the lithograph, which was allowed in evidence in this case as People's Exhibit 3, then they are to find the defendant guilty and fine him not less than $50.00 nor more than $200.00.

9. The court improperly gave to the jury the instructions objected to by the defendant.

10. The court erred in refusing to give certain instructions requested by defendant.

11. The court erred in refusing to give the following instruction to the jury as requested by defendant:

In order to find the defendant guilty in this case the jury must be convinced beyond all reasonable doubt of each and every one of the following items:

1) That on or about January 7, 1950, the defendant published, presented and exhibited the petition introduced in evidence and marked People's Exhibit 3.

2) That said defendant published, presented and exhibited said petition in a public place.

3) That said petition portrays depravity, criminality, unchastity or lack of virtue of citizens of the negro race and color.

4) That said petition exposes citizens of Illinois of the negro race and color to contempt, derision or obloquy.

[fol. 40] If you do not find beyond a reasonable doubt any one of the foregoing items, you should find the defendant not guilty.

12. The court erred in refusing to give the following instruction to the jury as requested by defendant:

The court instructs the jury that free speech and free press is guaranteed by the Constitution of the United States and also by the Constitution of the State of Illinois. A free press may best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. A free press is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech and of the press, though not absolute, are, nevertheless, protected against censorship or punishment unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance and unrest.

There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas, either by legislature, courts

or dominant political or community groups. No conviction can be had of the defendant in this case, even though the jury believe that the article complained of stirred people to anger, invited public dispute or brought about a condition of unrest.

13. The court erred in refusing to give the following instruction to the jury, as requested by defendant:

> The jury is further instructed that even though the article complained of induced a condition of unrest [fol. 41] and dissatisfaction with conditions as they are, or even stirred the reader to anger, still they must find the defendant not guilty unless they further find beyond reasonable doubt that the article complained of was likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest.

14. The court erred in permitting incompetent, irrelevant, immaterial and prejudicial testimony on behalf of plaintiff, particularly the testimony of Dr. Richard Dailey and Captain Harry Deas; and refusing motion of defendant to strike said testimony from the record.

15. The argument of the prosecutor was prejudicial.

16. The verdict of the jury is contrary to the law; it is contrary to the evidence; it is contrary to the law and the evidence.

On May 12, 1950, the defendant moved the Court for Judgment Notwithstanding the Verdict, and for grounds of said motion filed reasons appearing on pages 234, 235 and 236 of the record (Abst. 38-41).

Motion for New Trial Overruled

Thereupon, the Court overruled the foregoing motion for a new trial, which the defendant then and there duly excepted.

Thereupon, the Court entered judgment on the verdict.

Motion in Arrest of Judgment Overruled

Thereupon, the defendant moved the Court in arrest of judgment, which motion the Court overruled and defendant, then and there duly excepted.

[fol. 42] APPEAL ALLOWED

Thereupon, the defendant prayed an appeal to the Supreme Court of the State of Illinois, which was allowed by the Court, upon the defendant filing his appeal bond in the sum of $400.00 and filing his Bill of Exceptions within ninety days.

Certificate by the court reporter.

Certificate of July 13, 1950, by the trial judge.

Stipulation by counsel to incorporate the original report of Trial Proceedings, in lieu of a copy thereof, in the transcript of record to be made and filed in the Supreme Court of the State of Illinois on appeal of this cause.

Order of July 25, 1950, that the written motion for a new trial be restored nunc pro tunc as of May 12, 1950.

Motion of defendant for Judgment Notwithstanding the Verdict or, in the alternative, for a new trial, filed nunc pro tunc as of May 12, 1950, heretofore appearing in the record, pages 234, 236.

Certificate dated July 26, 1950, of the Clerk of the Municipal Court of Chicago that the foregoing is a true, perfect and complete transcript of the record.

Respectfully submitted, Maximilian J. St. George,
Attorney for Defendant-Appellant.

[fol. 43] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the thirteenth day of November in the year of our Lord, one thousand nine hundred and fifty, within and for the State of Illinois.

Present: Jesse L. Simpson, Chief Justice; Justice Francis S. Wilson, Justice William J. Fulton, Justice Joseph E. Daily, Justice Walter T. Gunn, Justice Charles H. Thompson, Justice Albert M. Crampton; Ivan A. Elliott, Attorney General; Harry G. Newman, Marshal.

Attest: Earle Benjamin Searcy, Clerk.

Be it remembered, that, to-wit: on the 29th day of November, A. D. 1950, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

No. 31719

PEOPLE STATE OF ILLINOIS, Appellee

vs.

JOSEPH BEAUHARNAIS, Appellant

Appeal from Municipal Court, City of Chicago, 50 MC 28057

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that appellant hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

[fol. 44] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of January in the year of our Lord, one thousand nine hundred and fifty-one, within and for the State of Illinois.

Present: Jesse L. Simpson, Chief Justice; Justice Francis S. Wilson, Justice William J. Fulton, Justice Joseph E. Daily, Justice Walter T. Gunn, Justice Charles H. Thompson, Justice Albert M. Crampton; Ivan A. Elliott, Attorney General; Harry G. Newman, Marshal.

Attest: Earle Benjamin Searcy, Clerk.

Be it remembered, that afterwards, to-wit: on the 18th day of January, A. D. 1951, the opinion of the Court was filed in said cause and entered of record in the words and figures following, to-wit:

No. 31719

PEOPLE STATE OF ILLINOIS, Appellee

vs.

JOSEPH BEAUHARNAIS, Appellant

Appeal from Municipal Court, City of Chicago, 50 MC 28057

[fol. 45] OPINION MODIFIED ON THIS PAGE UPON DENIAL OF PETITION FOR REHEARING ON MARCH 20, 1951

Docket No. 31719—Agenda 44—November, 1950

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee

v.

JOSEPH BEAUHARNAIS, Appellant

Mr. Justice FULTON delivered the opinion of the Court:

This is a criminal prosecution, in the municipal court of Chicago, against the appellant, herein termed defendant, Joseph Beauharnais, for a violation of section 224a of

division I of the Criminal Code, (Ill. Rev. Stat. 1949, chap. 38, par. 471,) which reads as follows:

"It shall be unlawful for any person, firm or corporation to manufacture, sell or offer for sale, advertise or publish, present or exhibit in any public place in this state any lithograph, moving picture, play, drama or sketch, which publication or exhibition portrays depravity, criminality unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots. Any person, firm or corporation violating any of the provisions of this section, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50.00), nor more than two hundred dollars ($200.00.)"

The amended information filed on March 6, 1950 charged "that defendant on January 7, 1950, at the City of Chicago, did unlawfully publish, present and exhibit in public places, lithographs, which publications portrayed depravity, criminality, unchastity or lack of virtue of citizens of Negro race and color and which exposes citizens of Illinois of the Negro race and color to contempt, derision, or obloquy, which more fully appears in Exhibit A, which is attached hereto and made a part thereof."

Exhibit A referred to is a printed sheet of paper and in the form of a petition to Mayor Kennelly and to the city council of the city of Chicago. It is headed in large, black letters as follows:

"Preserve and Protect White Neighborhoods!
From the Constant and Continuous Invasion, Harrassment and Encroachment by the Negroes"

[fol. 46] In the body of the page it solicits the aid of one million white people in the city of Chicago to oppose the national campaign now on and supported by "Truman's Infamous Civil Rights Program" and many pro-Negro organizations to amalgamate the black and white races with the object of mongrelizing the white race. It points out that the "White Circle League of America" is the only white voice being raised in protest against Negro aggression; that white people must take advantage of this opportunity to

become united; that "if persuasion and the need to prevent the white race from becoming mongrelized by the Negroes will not unite us, then the aggressions . . . rapes, robberies, knives, guns and marijuana of the negro, surely will."

The entire exhibit is full of similar charges and inflammatory, anti-Negro language, appealing to the white people of the nation to force denial of equal rights to Negro citizens as guaranteed to them by the constitution of the United States.

The language used in the exhibit is the source of complaint by the prosecution. The circulation of copies of this exhibit on the streets of the city of Chicago, the solicitation of agents to conduct the distribution of same, and general direction of the movement by the defendant constitute part of the charge.

The case was tried before a jury, which found defendant guilty as charged in the information and fined him the sum of $200. Motions for new trial, for judgment notwithstanding the verdict, and in arrest of judgment were overruled, and judgment entered upon the verdict. Defendant brings an appeal direct to this court because the constitutionality of the section above quoted is challenged.

The defendant on the witness stand admitted that he was the founder, president, and director of the organization known as the "White Circle League of America;" that the literature in question was prepared by him or by someone else under his direction. He further admitted that he gave the said literature to agents with specific instructions as to how it should be distributed on the public streets of the city of Chicago, all of which was carried out and performed. The alleged lithograph follows with a plea for membership in the White Circle League.

Defendant's main defense is that section 224a, hereinbefore quoted, is unconstitutional because it violates the first amendment to the constitution of the United States and section 4 of article II of the constitution of the State of [fol. 47] Illinois, both of which guarantee to the people the right of free speech and freedom of the press. He further insists that said section 224a is unconstitutional because it deprives citizens of life, liberty or property without due process of law, as provided in the fourteenth amendment to the constitution of the United States, and that it offends section 17 of article II of the constitution of Illinois pro-

viding, "The people have the right to assemble in a peaceable manner to consult for the common good, to make known their opinions to their representatives, and to apply for redress of grievances."

It is claimed by the defendant that not only freedom of the press but also freedom of assembly and right to petition the government for a redress of grievances are threatened in this case.

In support of his contentions, defendant cites *Thornhill* v. *Alabama*, 310 U.S. 105. In that case a State statute forbidding loitering or picketing during a strike was involved, and the court upheld the right of peaceful picketing during labor disputes. Also cited was *Terminello* v. *City of Chicago*, 337 U.S. 1. There the defendant was convicted of disorderly conduct under a city ordinance. The ordinance, as construed by the trial court in his charge to the jury, permitted conviction of the defendant if his speech stirred people to anger, invited public dispute, or brought about a condition of unrest. The Supreme Court of the United States held that a conviction resting on any of those grounds may not stand, and reversed the case.

In *Near* v. *Minnesota*, 283 U.S. 697, an attempt was made to enjoin the publication of a Minneapolis newspaper because of the publication of scandalous matter. In none of the above cases was a statute similar to the present one involved, and neither are those cases conclusive of the questions arising in this case.

The Supreme Court of the United States and this court have held that the freedom of speech and of the press, which is secured by the constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom. *Gitlow* v. *People*, 268 U.S. 652; *Chaplinsky* v. *New Hampshire*, 315 U.S. 658; *People* v. *Doss*, 384 Ill. 400.

Section 224a, in question, is a form of criminal libel law [fol. 48] authorized by the constitution of the State of Illinois, and whether or not the defendant abused the freedom of speech granted by section 4 of article II of that constitution is the primary question in this case. In *Schenck* v. *U.S.* 249 U.S. 47, the principle was announced as follows: "The question in every case is whether the words used are

used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about substantive evils that Congress has a right to prevent."

A mere reading of the libelous publication in question here, refers to Negroes, as a class possessing various criminal tendencies, unchastity, and degrading sexual inclinations, all of which are "fighting words" liable to cause violence and disorder between the races. Any ordinary person could only conclude from the libelous character of the language that a clash and riots would eventually result between the members of the White Circle League of America and the Negro race.

The very statute which defendant challenges as unconstitutional was upheld in the case of *Bevins* v. *Prindable*, 39 Fed. Supp. 708, and affirmed by the United States Supreme Court in a memorandum opinion at 314 U.S. 573.

We do not find any merit in the claim that the statute is too broad in scope, or that the words of the statute are vague. We further believe that the controverted exhibit is sufficiently described as a lithograph and further as a publication within the terms of the statute.

It is also urged by defendant that the court erred in refusing defendant the right to prove the truth of the alleged libel, because section 179 of division I of the Criminal Code, (Ill. Rev. Stat. 1949, chap. 38, par. 404,) provides as follows: "In all prosecutions of libel, the truth, when published with good motives, and for justifiable ends, shall be a sufficient defense." Defendant made an offer of proof purporting to show that in white districts in Chicago the number of offenses reported were much smaller in number than those reported in districts largely populated by Negroes. He further offered to prove by witness Frank Lindstrom that his brother was shot by a Negro and that when a Negro family moves into a district or a block, real estate values immediately go down, and that the home of the said witness had depreciated in value about $2000. The People objected to the offer and the objection was sustained. The admission of such proof would be directed only as to a portion of the offense charged and could not in any manner be classed as [fol. 49] published for good motives and for justifiable ends. In fact, it is hard to see how, with the libelous publication in evidence, any proof of good motives or justifiable ends could be introduced. The trial court very properly denied the admission of the offered proof. (*People* v. *Spielman*, 318

Ill. 482; *People* v. *Fuller*, 238 Ill. 116.) Neither did the court err in denying defendant's motion for a directed verdict nor in the giving of the complained-of instruction to the jury.

The libelous and inflammatory language used in said exhibit A was designed to breed hatred against the Negro race and is not of such character as entitles defendant to the protection of freedom of speech guaranteed by the State and Federal constitutions.

The judgment of the municipal court of Chicago is affirmed.

Judgment affirmed.

[fol. 50] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of January in the year of our Lord, one thousand nine hundred and fifty-one, within and for the State of Illinois.

Present: Jesse L. Simpson, Chief Justice; Justice Francis S. Wilson, Justice William J. Fulton, Justice Joseph E. Daily, Justice Walter T. Gunn, Justice Charles H. Thompson, Justice Albert M. Crampton, Ivan A. Elliott, Attorney Geenral; Harry G. Newman, Marshal.

Attest: Earle Benjamin Searcy, Clerk.

Be it remembered, that, to-wit: on the 18th day of January, 1951, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

No. 31719

PEOPLE STATE OF ILLINOIS, Appellee,

vs.

JOSEPH BEAUHARNAIS, Appellant

Appeal from Municipal Court, City of Chicago, 50 MC 28057

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as mat-

ters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Municipal Court of the City of Chicago aforesaid, be affirmed in all things and stand in full force and effect, notwithstanding the said matter and things therein assigned for error.

I, Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In witness whereof, I have hereunto subscribed my name and affixed the Seal of said court this — day of ——, 19—.

—— ——, Clerk, Supreme Court of the State of Illinois.

[fol. 51] And afterwards, to-wit: on the 9th day of February, A. D. 1951, there was filed in the Office of the Clerk of the Supreme Court a certain petition for rehearing, which is in the words and figures following, to-wit:

[fol. 52] [Stamp:] Filed Feb. 9, 1951. Earle Benjamin Searcy, Clerk

IN THE SUPREME COURT OF ILLINOIS, SEPTEMBER TERM, A. D. 1950

No. 31719

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

vs.

JOSEPH BEAUHARNAIS, Defendant-Appellant

Appeal from the Municipal Court of Chicago, Honorable Joseph H. McGarry, Judge Presiding

PETITION FOR REHEARING

Maximilian J. St. George, Attorney for Defendant-Appellant.

[fol. 53] To The Honorable Justices of The Supreme Court of Illinois:

Comes now Joseph Beauharnais, appellant (defendant), and having duly filed his notice of intention to petition for a rehearing in this cause in which the opinion was filed on January 18, 1951, respectfully shows to this Court that:

The opinion of this Court is wholly without judicial precedent.

The opinion seems to hold that the constitutionality of par. 471, of chap. 38, of Ill. Rev. Stat. 1949, has been upheld when in fact it never has; that the uttering of all publica-
[fol. 54] tions which are libelous is within the purview of the statute, when in fact the statute contains only certain specific types of libelous publications; and that a conviction may be based solely on so called "fighting words" while finding that there is no clear and present danger, when in fact the Supreme Court of the United States has continuously held that "fighting words" alone are not sufficient.

Petitioner (defendant), respectfully shows to the Court that in its opinion in this cause this Court overlooked or misapprehended the following:

1. This Court on Page 4 (middle) says that the case of Bevins v. Prindable, 39 Fed. Sup. 708, 314 U. S. 573 upheld the constitutionality of the statute here involved.

This Court misconstrues the findings in *Bevins* v. *Prindable*, 39 Fed. Sup. 708, 314 U. S. 573 when it says that the cited case "upheld" the statute in question. The only question there involved was whether the Federal Court had the right to enjoin the State's agents. On Page 709 the Court there said:

> "Plaintiffs seek by interlocutory injunction to restrain the enforcement of a state statute by the qualified and acting officers * * *".

In denying the injunction the Court went on to say on pages 711-712 that there was no showing that plaintiffs would suffer irreparable damage and even "if the statute were clearly unconstitutional, it would not necessarily follow that the interlocutory injunction here prayed for should issue from this Court".

As to upholding the constitutionality of the statute, the Court clearly states at point 6, page 712:

> "In the view we take of the case under the evidence we do not now find it necessary to consider the constitutionality of the statute * * * Whether a statute of [fol. 55] the State of Illinois is valid which makes the defamation of a class a criminal offense would seem first to be a question of the courts of Illinois."

After a discussion of the principle that a state court must have the first chance at deciding the constitutionality of the acts of its legislature, the Court goes on to state on page 713:

> "Should the decision of the Illinois courts be unsatisfactory, a review of the Federal question by the Supreme Court of the United States will be available (and the *Federal Courts will not interfere in the present case*)."

2. On Page 4 (middle) the Court mis-states the scope of the Statute.

That the literature in question is not a lithograph must be self-evident to the Court upon inspection; for the exhibit

(People's Ex. 3) is in its hands in the original form, on page 13 of the abstract and page 83 of the record. Therefore, this Court must have found that *all* publications could be grounds for prosecution, contrary to the precise wording of the statute.

On a careful re-reading of this statute this Court will find that the only "publication or exhibits" which come within the purview of the statute is a lithograph, moving picture, play, drama or sketch. "*Expressio unis est exclusio alterius!*" (See appellant's brief, pages 21-24.)

3. The Decision of this Court does not meet the "clear and present danger" doctrine laid down by the Supreme Court of the United States.

This Court states on page 4 that "riots would *eventually* result". Therefore, this Court admits that the lower court found no "clear and present danger". A conviction without a "clear and present danger", or such statute which [fol. 56] allows a conviction without a "clear and present danger", is unconstitutional as was stated in the cases cited in appellant's brief on pages 18-21.

Likewise, the construction which the trial court gave to the questioned statute, when it maintained that a conviction could be had under the objectionable instruction #1 (A. 30, R. 197; appellant's brief, page 27) is patently contrary to the State and Federal Constitutions in that it permits a conviction without the finding of a "clear and present danger", without a consideration of truth and good motives, and without regards to any quantum of proof. We humbly submit that since the said instruction was the only one which contained the gist of the offense that a statement of the quantum of proof necessary was vital to it, and that the lack of such quantum was fatal.

If this "clear and present danger" rule is not strictly adhered to, anyone who utters the Bible can be prosecuted; for the Bible is full of derogatory stories and statements about the Jews. Defendant said nothing worse about the negroes than Christ did about the Jews: "Then said Jesus unto the Jews, ye are of your father the devil, and the lusts of your father ye will do. He was a murderer from the beginning, and abode not in the truth, because there is no truth in him. When he speaketh a lie, he speaketh of his own; for he is a liar and the father of it." (St. John, 8:44.)

This Court is ahowing this conviction to stand on the mere finding that the language used constituted "fighting words", contrary to the law cited by appellant in his brief, pages 8-15.

[fol. 57] 4. On Page 2 (bottom) this Court misconstrues the evidence.

The State offered proof that defendant gave the questioned literature to agents, but the State was unable to prove, nor did it try to prove, that any agent under defendant's direction and control distributed this literature in a public place. But on the contrary, the State proved that at least one of these purported agents refused to distribute the literature (A. 9; R. 67). Therefore, defendant should have been granted a directed verdict at the close of the State's case.

Also, there is no showing that defendant tried as it says on page 2 to "force (the) denial of equal rights to negro citizens as guaranteed to them by the constitution of the United States". All that the evidence shows is that defendant tried to confine the habitation of both whites and blacks to separate areas, all of which was to be done by ordinances, statutes or amendments, and not by force.

If a man is denied his right to try to have changes made in the laws by legal means just because his endeavors breed hatred "freedom of speech and press and right of redress" are mere nullities.

Defendant wishes to call to the attention of this court the case of *Feiner* v. *New York*, case 93 Oct. Term 1950, 11 C.C.H. U.S. Supreme Court Bulletin page 399, handed down by the Supreme Court of the United States on January 15, 1951, which decision is only three days prior to the decision in the present case. In the cited case the court clearly shows how eminent and clear the danger of a breach of peace must be before the state may intervene: though [fol. 58] the speech, therein, exhorted the negroes to rise in arms against the whites, an impending riot had to be proven before defendant could be found guilty.

For the reasons hereinabove set forth, defendant earnestly prays that a re-hearing may be granted.

Respectfully submitted, Maximilian J. St. George,
Attorney for Defendant-Appellant.

[fol. 59] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the twelfth day of March in the year of our Lord, one thousand nine hundred and fifty-one, within and for the State of Illinois.

Present: Jesse L. Simpson, Chief Justice, Justice Francis S. Wilson, Justice William J. Fulton, Justice Joseph E. Daily, Justice Walter T. Gunn, Justice Charles H. Thompson, Justice Albert M. Crampton; Ivan A. Elliott, Attorney General; Harry G. Newman, Marshal.

Attest: Earle Benjamin Searcy, Clerk.

Be it remembered, that, to-wit: on the 19th day of March, A. D. 1951, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

No. 31719

PEOPLE STATE OF ILLINOIS, Appellee,

vs.

JOSEPH BEAUHARNAIS, Appellant

Appeal from Municipal Court, City of Chicago, 50 MC 28057

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

[fol. 60] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the twelfth day of March in the year of our Lord, one thousand nine hundred and fifty-one, within and for the State of Illinois.

Present: Jesse L. Simpson, Chief Justice; Justice Walter T. Gunn, Justice Charles H. Thompson, Justice Albert M. Crampton, Justice William J. Fulton, Justice Joseph E. Daily, Justice Walter V. Schaefer; Ivan A. Elliott, Attorney General; Harry G. Newman, Marshal.
Attest: Earle Benjamin Searcy, Clerk.

And afterwards, to-wit: on the 18th day of April, A. D. 1951, the same being one of the days in vacation after the term of Court aforesaid, there was filed in the Office of the Clerk of the Supreme Court a certain stay order, which is in the words and figures following, to-wit:

[fol. 61] IN THE SUPREME COURT OF ILLINOIS, SEPTEMBER TERM, A. D. 1951

No. 31719

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

vs.

JOSEPH BEAUHARNAIS, Defendant-Appellant

Appeal from the Municipal Court of Chicago

Honorable Joseph H. McGarry, Judge Presiding

ORDER

This matter coming on to be heard on the motion of Joseph Beauharnais to stay the mandate heretofore entered in this cause, the Court being fully advised in the premises, and after argument of counsel;

It is ordered that the mandate in this cause be and the same is hereby stayed until such time as the Supreme Court

of the United States shall decide the petition of defendant for certiorari.

Enter:

(S.) Walter V. Schaefer, Judge.

April 17, 1951.

[fol. 62] UNITED STATES OF AMERICA

STATE OF ILLINOIS,
Supreme Court, ss:

I, Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois, and keeper of the records and Seal thereof, do hereby certify the foregoing to be a true copy of the record of this Court in a certain cause entitled: No. 31719, People State of Illinois, Appellee, vs. Joseph Beauharnais, Appellant, Appeal from Municipal Court, City of Chicago, 50 MC 28057 filed in this office on the 10th day of August, A. D. 1950.

In witness whereof, I have hereunto subscribed my name and affixed the Seal of said court this 8th day of June, 1951.

Earle Benjamin Searcy, Clerk, Supreme Court of the State of Illinois. (Seal.)

[fol. 59] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 8, 1951

The petition herein for a writ of certiorari to the Supreme Court of the State of Illinois is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.